

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

315
74-2556

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

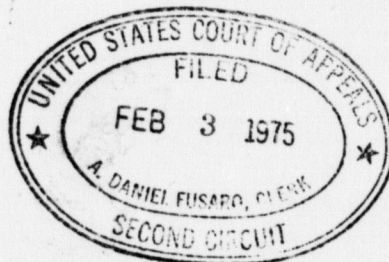
JOHN DOE, a/k/a
JUANITO CANCELA-CASTILLO,

Appellant.

Docket No. 74-2556

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALIANGER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

MICHAEL YOUNG,
Of Counsel

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Did use assumed name when applying for admission to	the US
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DATE	PROCEEDINGS
29-74	Before COSTANTINO J - Indictment filed.
1-6-74	Before WEINSTEIN J - case called - deft & counsel J. Seybert of Legal Aid present - Albert Boyne sworn as interpreter - deft arraigned and enters a plea of not guilty - Pre Trial conference held and concluded - defts motion for reduction of bail is denied - bail contd. trial set for Nov. 13, 1974 @ 9:30 am.
1-13-74	Before WEINSTEIN J - case called - deft & counsel Joanna Seybert of Legal Aid present - trial ordered and BEGUN - Jurors selected and sworn - Joaquim Cuma sworn as interpreter - Trial contd to Nov. 14, 1974.
1-14-74	Before WEINSTEIN J - case called - deft & counsel Joanna Seybert of Legal Aid present - trial resumed - defts motion to dismiss the

A TRUE COPY
ATTEST
DATED 12/12/74
LEWIS ORGEL

RJD:LA:mt
F.#743,413

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OCT 21 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

UNITED STATES OF AMERICA

INDICTMENT

- against -

Cr. No. _____
(T. 18 U.S.C., §1546)

JOHN DOE,

Defendant.

THE GRAND JURY CHARGES:

74CR 601

On or about the 15th day of October, 1974, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant JOHN DOE, when applying for admission to the United States and in order to evade the immigration laws of the United States knowingly and willfully appeared under the assumed name of Juanito Canela-Castillo without disclosing his true identity. (Title 18, United States Code, Section 1546).

A TRUE BILL.

James R. Wechsler
FORMAN.

David G. Trager
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1 THE COURT: Good morning ladies and gentle-
2 ment. I have your note.

3 The Government must prove beyond a reason-
4 able doubt two elements: First, that the defen-
5 dant sought entry or admission to the United
6 States. There does not seem to be any doubt about
7 that. He came to immigration and tried to get
8 into the country and he so testified.

9 Secondly, that the defendant willfully
10 and knowingly appeared under the assumed name of
11 Juanito Canale Canille without disclosing his
12 true identity.

13 The Government must show therefore that
14 he appeared under an assumed name and that he did
15 so willfully and knowingly, that is to say that
16 this was not the passport and visa issued to him
17 but it was issued to somebody else and he falsely
18 used it and said he was that other person.

19 A person does not knowingly do an act if
20 his action resulted from a mistake, negligence or
21 any other innocent reason.

22 An act is willful if the defendant acts
23 voluntarily and intentionally and with a specific
24 intent to do something the law forbids, that is
25 to say, with a bad purpose of either disobeying

1 or disregarding the law.

2 Here the bad purpose would be to illegally
3 enter this country under an assumed name, using
4 somebody else's passport and papers, if that is
5 what you find beyond a reasonable doubt.

6 The Government does not have to prove the
7 actual identity of the defendant. It is enough
8 for the Government to just show that the defen-
9 dant willfully impersonated another person in order
10 to gain entry into the United States.

11 The defendant, however, testified that he
12 is, in fact, the person named on the passport
13 and other documents, and that it was issued to
14 him. You remember that testimony.

15 Now, will Counsel come to the side bar,
16 please?

17 (Side bar discussion out of hearing of
18 the Jury as follows:)

19 THE COURT: Any objection or acceptions?

20 MR. ADLERSTEIN: No.

21 MS. SIEBERT: I request that you charge
22 that the Government must prove beyond a reasonable
23 doubt that the defendant is actually not Juanito
24 Canela Castillo and that he assumed this name.

25 MR. ADLERSTEIN: This gets down to a ques-

1 tion of semantics.

2 THE COURT: I think I have sufficiently
3 charged them on this. I think the charge is
4 more favorable to the defendant than is required
5 because even if his name was the same, if he
6 used somebody else's passport he would be guilty.

7 MS. SIEBERT: The indictment charges him
8 with using an assumed name. If this is not his
9 name, the fact that he had an invalid passport
10 does not make him guilty of the charge. He is
11 only claiming that the passport was issued to
12 him, the visa and application --

13 MR. ADLERSTEIN: This gets down to a ques-
14 tion of semantics.

15 THE COURT: Maybe so. That is what is
16 charged.

17 (In hearing of the Jury.)

18 THE COURT: The charge is that the defen-
19 dant used the assumed name of Juanito Canela
20 Castillo without disclosing his true identity and
21 that is what you have to find beyond a reasonable
22 doubt as I have explained to you in more detail.

23 (Side bar discussion, out of hearing of
24 the Jury.)

25 MS. SIEBERT: And that the defendant is not

1 charged without having an invalid --

2 THE COURT: Well, there is no charge of
3 the invalidity of the passport.

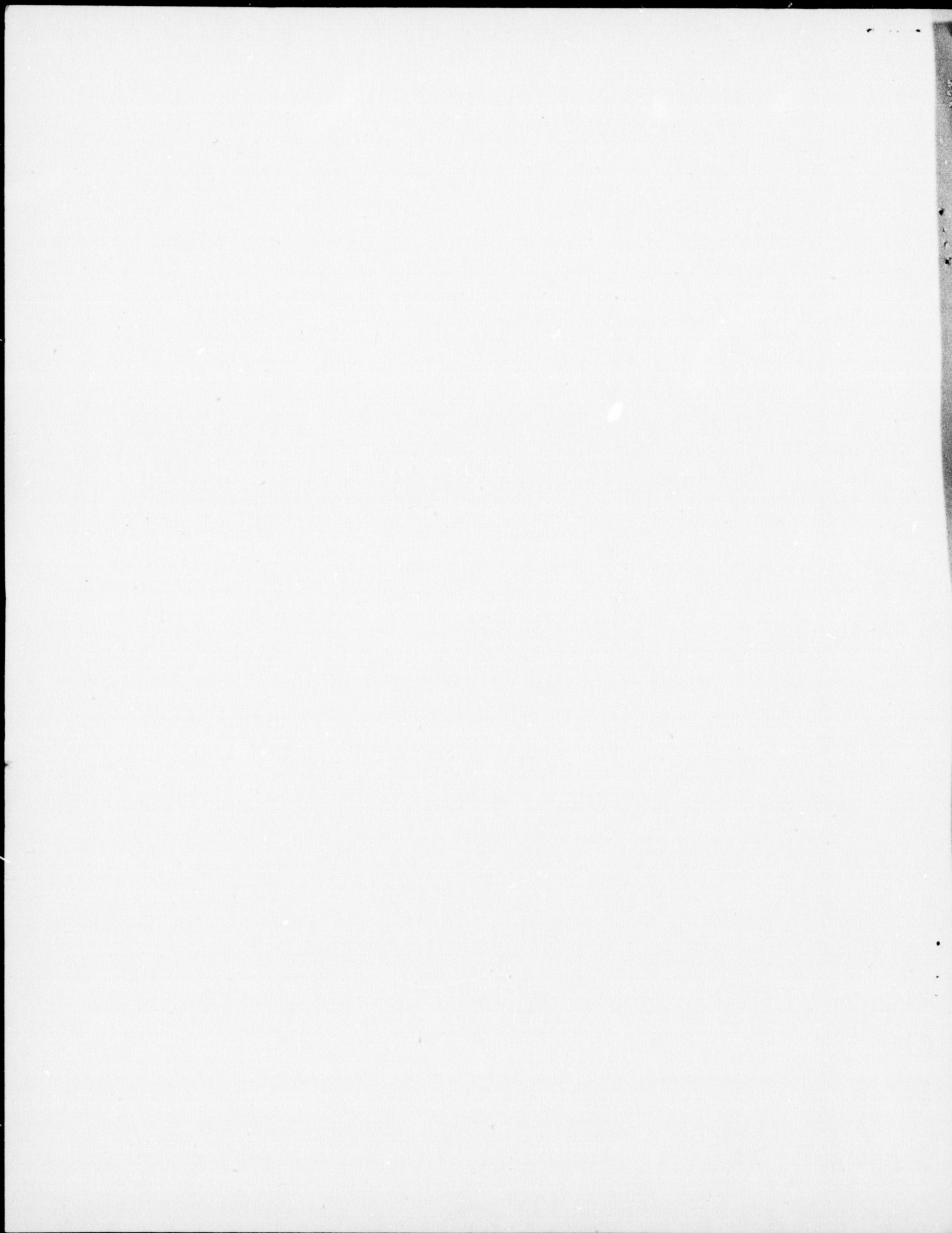
4 MR. ADLERSTEIN: Could you say that the
5 passport did not belong to this defendant?

6 THE COURT: I think I have charged suffic-
7 iently.

8 (Within hearing of the Jury.)

9 THE COURT: There is no claim of the in-
10 validity of the passport. The claim is that this
11 is not the passport issued to him, that he is
12 not the Juanito Canela Castillo described in the
13 passport.

14 (The Jury withdrew at 11:07 A.M.)



Certificate of Service

2/3/75, 19

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

E. J. Doyle